HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS

A.S.No.1583 of 2003 & Rev.ASMP.No.376 of 2016 &
A.S.No.3833 of 2003

ORDER: (per V. Ramasubramanian, J.)

While A.S.No.1583 of 2003 is by the Land Acquisition Officer challenging the award passed by the reference Court enhancing the compensation payable to the land owners, the petition in ASMP No.376 of 2013 is by the legal representatives of the land owner, seeking a review of the judgment passed by this Court in A.S.No.3833 of 2003.

2. We have heard the learned Government Pleader for the State of Andhra Pradesh and Sri P. Sridhar Reddy, learned counsel appearing for the petitioners in the review application.

3. By a notification dated 18-05-1992 issued under Section 4 (1) of the Land Acquisition Act, 1894, certain lands in the District of Kadapa were acquired, for the purpose of submergence under the Somasila Project. The Land Acquisition Officer passed awards fixing the compensation at a particular rate. Not satisfied with the award, the land owner sought a reference under Section 18 of the Act. The reference Court, by a judgment dated 31-08-2000, passed in LAOP.No.54 of 1999, increased the market value by three times.

4. The Land Acquisition Officer filed a regular appeal, with a huge delay. By an order dated 24-03-2002, passed in ASMP.No. 8203 of 2002 in AS (SR) No.28149 of 2002, this Court dismissed the condone delay petition. However, the Land Acquisition Officer filed an application for review in Rev.ASMP. No.9381 of 2003 and the same was allowed on 04-03-2003 condoning the delay.

5. Though the land owner Kake Raja Gopal Reddy and others filed an appeal before the supreme court against the order passed in the review application, they withdrew Civil Appeal No.2149 of 2004, on 31-08-2010.

6. After the withdrawal of the said civil appeal before the Supreme court, the regular appeal filed by the Land Acquisition Officer got numbered as A.S.No.1583 of 2003. That is the appeal that we are now concerned with.

7. But in the mean time, the land owner Kake Raja Gopal Reddy and other land owners had also filed regular appeals in A.S.No.3833 of 2003 etc., against the judgment of the reference Court in LAOP.No.54 of 1999. This appeal was disposed of by a Division Bench of this Court by an order dated 29-08-2008, enhancing the compensation payable for the pomegranate trees available on the acquired land, to Rs.700/- per tree.

8. This judgment dated 29-08-2008 was actually based upon a previous order passed by the Division Bench on 06-08-2008 in A.S.Nos.3798 of 2008 and 2081 of 2001.

9. As a matter of fact, 3 more appeals in A.S.Nos.1050, 1058 and 1059 of 2007 arising out of the same judgment of the reference Court, were also disposed of by a Division Bench of this Court by a judgment dated 18-12-2008, on the basis of the first decision in A.S.No.3798 of 2000 and 2081 of 2001 dated 06-08-2008.

10. In other words, the first of the decisions rendered by a Bench of this Court was dated 6-8-2008 in A.S.Nos.3798 of 2000 and 2781 of 2001, fixing the market rate for pomegranate trees as Rs.700/- per tree. It was this judgment that was followed, first in A.S.No.3833 of 2003 by order dated 29-08-2008 and next in A.S.Nos.1050, 1058 and 1059 of 2007 by order dated 18-12-2008.

11. However the appellants in A.S.No.3798 of 2000 and 2081 of 2001 later came up with applications in ASMP.Nos.40 and 41 of 2009 for a review of the judgment dated 06-08-2008. The review application was allowed on 7-9-2009 and the first appeals were reopened for fresh consideration. Thereafter, by a judgment dated 24-09-2013, these two appeals A.S.Nos.3798 of 2000 and 2081 of 2001 were allowed, enhancing the market value to Rs.2000/- per pomegranate tree.

12. Upon coming to know of the said judgment, the appellants in A.S.Nos.1050, 1058 and 1059 of 2007 also came up with review applications in ASMP.Nos.334 of 2010, 1579 of 2013 and 1578 of 2013. These review applications were also allowed by a Bench of this Court on 20-11-2013, enhancing the compensation to Rs.2000/- per tree. As a matter of fact this Court also allowed an amendment of the value of the appeal, in ASMP.No.935 of 2013 in A.S.No.1050 of 2007.

13. But unfortunately Kake Raja Gopala Reddy who was the appellant in A.S.No.3833 of 2003 died. Therefore, he could not file applications for review of the judgment dated 29-08-2008 rendered in his A.S.No.3833 of 2003. Therefore, his legal representatives have come up with the application in A.S.No.376 of 2013 for a review of the judgment.

14. The main contention and perhaps the only contention of Sri P. Sridhar Reddy, learned counsel for the review applicants is that the regular appeal A.S.No.3833 of 2003 filed by their father Raja Gopal Reddy was disposed of by a very short judgment, following the previous judgment in A.S.No.3798 of 2000 and 2081 of 2001. Once that judgment has been reviewed, the judgment rendered in A.S.No.3833 of 2003 should also be reviewed.

15. But the response of Mr. Sivaiah, learned Government

Pleader is that the case of the petitioners do not satisfy the parameters of Order XLVII Rule 1 of the Code of Civil Procedure. According to the learned Government Pleader, the practice of filing review applications after 7, 8 years etc., on the basis of the judgment rendered in other cases, will destroy the principle of finality to the litigation. It is further contended by the learned Government Pleader that the father of the present petitioners did not choose to seek a review of the judgment in his appeal, during his life time. It means he had accepted the judgment. In such circumstances, the legal representatives are not entitled, according to the learned Government Pleader, to seek a review of a judgment rendered in an appeal filed by their father. It is also stated by the learned Government Pleader that what the father of the review applicants sought was only Rs.700/- per tree and that even after amendment, he sought only Rs.1500/- per tree. Therefore, it is not possible for the legal representatives to claim Rs.2000/- per tree.

16. We have carefully considered the above submissions.

17. There are no disputes about three fundamental facts viz., a) that the judgment in A.S.No.3833 of 2003 was rendered solely on the basis of the previous judgment of this Court; b) that the previous judgment was subsequently reviewed and c) that three other appeals disposed of on the basis of the first judgment have also been reviewed leaving only the case of the petitioners not reviewed so far.

18. The judgment in A.S.No.3833 of 2003 dated 29-08-2008, in entirety reads as follows:

> "Heard Sri P. Sridhar Reddy, learned counsel appearing for the appellants/claimants, and learned Government Pleader for Appeals.
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> This appeal is filed assailing the judgment and decree passed by the Senior Civil Judge, Rajampet in LAOP.No.54 of 1999, dated

31.08.2000, in a proceeding arising under Section 18 of the Land Acquisition Act, 1894 (for short "the Act"), seeking enhancement of compensation.

Learned counsel on either side submit that the issue involved in this appeal is squarely covered by a judgment of this Court in A.S.No.3798 of 2000, dated 06.08.2008, whereunder this Court had fixed the market value of each tree at Rs.700/- (rupees seven hundred only).

Following the same, the appeal is allowed, holding that the appellants/claimants are entitled to the enhanced market rate at Rs.700/- (rupees seven hundred only), per tree. The appellants/claimants are also entitled to all the statutory benefits as per the amended provisions of the Act. No costs."

19. Therefore, it is clear that no independent decision was taken in A.S.No.3833 of 2003. The decision solely rested upon the previous decision in A.S.No.3798 of 2000 dated 6-8-2008.

20. The Government Pleader is not able to deny the fact that the judgment in A.S.No.3798 of 2000 dated 6-8-2008 was subsequently reviewed and that the compensation was enhanced from Rs.700/- per tree to Rs.2000/-per tree. The learned Government Pleader is also not able to deny the fact that all other judgments (except the judgment in A.S.No.3833 of 2003) rendered on the basis of A.S.No.3798 of 2000 have also been reviewed enhancing the compensation from Rs.700/- per tree to Rs.2000/- per tree. The only judgment that is left out of the batch is A.S.No.3833 of 2003. Keeping this in mind, let us test the validity of the contentions raised by the learned Government Pleader.

21. The first objection of the learned Government Pleader is that the review application does not satisfy the parameters of Order 47 Rule 1 of the Code. But this objection loses sight of one important fact, viz., that the entire judgment which is sought to be reviewed, was wholly based upon the judgment pronounced in another case. That case has already been reviewed. It is only when a Court had independently reached a conclusion on the

issues arising for consideration that the parameters of Order 47 Rule 1 can be put against the person seeking review. There was neither a discussion nor an independent decision reached in the judgment under review. The judgment under review has no independent legs to stand. The very foundation, on which the judgment under review is based, has now gone. Therefore, the first contention deserves to be dismissed.

22. The decisions of the Supreme Court in **S.Bagirathi Ammal v. Palani Roman Catholic Mission**[1] **and Kamlesh Verma v. Mayawati & ors**.[2], relied upon by the learned Government Pleader, have no application to the case on hand, in view of the peculiar circumstances. In both the cases decided by the Supreme Court, the Supreme Court only reiterated the time tested principle that for entertaining a review, the error must be apparent on the face of the record and not an error which has to be fished out and searched. In this case, there is no necessity for searching any error. The judgment under review simply followed the judgment in earlier cases fixing the compensation for the trees located in the acquired land, in the very same area under the very same notification. When those judgments have been reviewed, the very foundation of the judgment under review has been removed.

23. It is true that of late the tendency to file review applications is on the increase. The reasons are not too difficult to be found out. But the said issue can be addressed in an appropriate case where a decision independently reached, is sought to be reviewed on the basis of some other judgment.

24. The second contention of the learned Government Pleader is that the father of the review applicant did not choose to seek a review, during his life time. Therefore, the learned

Government Pleader contends that when the father has accepted the judgment and did not seek a review, it is not open to the legal heirs to reopen the same.

25. But the above contention of the learned Government Pleader overlooks the chronology of events. The chronology can be put in a nutshell as follows:

(i) On 6.08.2008 this Court delivered the first judgment in A.S.Nos.3798 of 2000 and 2081 of 2001, fixing the market value of the pomegranate trees at Rs.700/- per tree.

(ii) On 29.08.2008 the appeal out of which the present review arises, viz., A.S.No.3833 of 2003 was allowed on the basis of the judgment dated 06.08.2008.

(iii) On 18.12.2008, three more appeals in A.S.Nos.1050, 1058 and 1059 of 2007 were allowed on the basis of the judgment dated 06.08.2008 and 29.08.2008.

(iv) On 7.09.2009, the applications for review of the judgment dated 06.08.2008 in A.S.Nos.3798 of 2000 and 2081 of 2001 were allowed and the appeals reopened for a fresh consideration.

(v) On 24.09.2013 a fresh judgment was passed in A.S.Nos.3798 of 2000 and 2081 of 2001 fixing the market value at Rs.2000/- per tree.

(vi) Following the above, the applications for review in A.S. Nos. 1050, 1058 and 1059 of 2007 were also allowed on 20.11.2013.

(vii) But Rajagopal Reddy, the father of the review applicant, died on 20.08.2013.

26. Therefore, it is clear that the earliest judgment dated 06.08.2008 was reviewed and a new judgment delivered only on

24.09.2013 and on 20.11.2013, after the death of the review applicant's father. Hence it is not correct to say that the petitioner's father was satisfied with the judgment and did not seek a review during his life time. It is only after his life time that the landowners in the other cases got their own judgments reviewed and secured an enhanced compensation. Therefore, the second contention of the learned Government Pleader cannot also be accepted.

27. The next contention of the learned Government Pleader is that the original claim of the applicant's father in the main appeal was only for Rs.700/- per tree and that therefore the petitioner cannot now claim more than what was originally claimed. But this contention is contrary to the law laid down by the Supreme Court in **Ashok Kumar and Another v. State of Haryana**[3] wherein it was pointed out in paragraph-6 that prior to amendment Act 68 of 1984, the amount of compensation that could be awarded was limited to the amount claimed. But after the amendment, the cap is only on the minimum and not on the maximum. The Supreme Court emphasised that it is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

28. Therefore all the objections of the learned Government Pleader deserve to the rejected and accordingly they are rejected. The review application is consequently allowed, the judgment dated 29.08.2008 in A.S.No.3833 of 2003 is recalled. A.S.No.3833 of 2003 is allowed on the same terms as this Court allowed A.S.No.3798 of 2000 by judgment dated 24.09.2013 and A.S.Nos.1050, 1058 and 1059 of 2007 by judgment dated

20.11.2013. The petitioner will be entitled to a compensation of Rs.2000/- per pomegranate tree, to the extent there were pomegranate trees, as recognised by the Land Acquisition Officer in his award, in respect of the survey numbers owned by the applicant's father. There will be no order as to costs.

29. Insofar as A.S.No.1583 of 2003 is concerned, the same, as we have pointed out earlier, is an appeal filed by the Land Acquisition Officer against the very same judgment of the reference Court dated 31.08.2000 in O.P.No.54 of 1999. In all the previous litigations, the award passed by the reference Court in O.P.No.54 of 1999, dated 31.08.2000 was further enhanced in favour of the landowners and the cross-objections or appeals filed by the Government were dismissed. Therefore, following the same, A.S.No.1583 of 2003 is dismissed. No costs.

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V. RAMASUBRAMANIAN, J

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ANIS, J

Date: 17-8-2016.

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[1] (2009) 10 SCC 464

[2] AIR 2013 SC 3301

[3] (2016) 4 SCC 544